



## **Agricultural Marketing Service**

### **7 CFR Part 1206**

**[Document No. AMS-SC-20-0086]**

## **Mango Promotion, Research and Information Order; Removal of Frozen Mangos**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule with minor changes, an interim final rule that amends the Mango Promotion, Research and Information Order (Order) by removing the provisions of frozen mangos as a covered commodity. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture (USDA). In a referendum, first handlers and importers voted to remove frozen mangos as a covered commodity under the Order. This rule will remove frozen mangos as a covered commodity, discontinue the collection of assessments on frozen mangos, remove frozen mango entity representation on the Board, and make necessary conforming changes.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room

1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-5057; or email: Marlene.Betts@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule affecting 7 CFR part 1206 (the Order) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

#### **Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where

matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about these revisions to the regulation.

#### **Executive Order 12988**

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order issued under the Act may file a written petition with USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and request a modification of the order or an exemption from the order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the

petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

### **Background**

The Mango Promotion, Research, and Information Order (Order) took effect in November 2004 (69 FR 59120), and assessment collection began in January 2005 for fresh mangos. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture. Originally, the program was funded by assessments on first handlers and importers of fresh mangos, and was focused on maintaining and expanding existing markets and uses for fresh mangos through its research, promotion and information efforts.

Frozen mangos as a covered commodity was added to the Order on February 21, 2019 (84 FR 5335), and a referendum was held in 2019 to determine whether the industry favored the inclusion of frozen mangos as a covered commodity under the Order. In the 2019 referendum, 52.5 percent of first handlers and importers of fresh and frozen mangos were in favor of the amendment to add frozen mangos to the Order. Since the vote passed by a small margin, the frozen mango industry asked the Board to conduct another referendum on

whether frozen mangos should continue as a covered commodity under the Order.

The Order prescribes that every five years, the USDA conduct a referendum to determine if first handlers and importers of mangos favor the continuation of the Order. Such a referendum was required to be conducted in 2020. At the Board's September 2019 meeting, it was unanimously recommended to the USDA to add a second question to the continuance referendum ballot concerning frozen mangos as a covered commodity. USDA conducted a referendum from September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers) covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos and 9 percent did not vote on this question. Of those representing frozen

mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

Section 522 of the 1996 Act (7 U.S.C. 7421) and § 1206.72 of the Order (7 CFR 1206.72) provide that if the Secretary determines that provisions of the Order are not favored by persons voting in a referendum, the Secretary shall terminate those provisions. An interim final rule was published in the **Federal Register** on February 24, 2021, providing a 60-day comment period that ended April 26, 2021. In accordance with the 1996 Act and Order, this rule adopts the interim rule, with a few minor changes to sections 1206.34 and 1206.43. The interim final rule proposed removal of the provisions of frozen mangos as a covered commodity under the Order and the final rule is adopting these changes from the interim final rule without change. They include: removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment collection provisions for frozen mangos at a rate of \$0.01 per pound and thereby eliminating assessments on frozen mango imports; and removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually. In addition, the interim final rule proposed clarifying and conforming changes to other provisions of the Order.

Sections 1206.34 and 1206.43 are being revised in this rule from the interim final rule for further clarification.

### **Order Provisions**

The interim rule set forth the following proposed changes that are being adopted without change. In accordance with § 1206.72, the following changes are necessary to terminate and remove the provisions regarding frozen mangos from the Order. Sections 1206.6 and 1206.9 which define the terms "first handler" and "importer," respectively, were revised to add the reference that first handlers and importers, respectively, must receive or import 500,000 or more pounds of mangos; this volume was added for the purpose of clarity.

Section 1206.8, which defines the term "foreign producers and foreign processor of frozen mangos or foreign processor", was revised to remove the definitions of "foreign processor of frozen mangos or foreign processor" because they are no longer covered under the Order. The definition for "foreign producer" will remain.

The definition of "mangos" in § 1206.11 was revised to mean all fresh fruit of *Mangifera indica* L. of the family *Anacardiaceae*. The term "frozen mangos" was removed as it is no longer a covered commodity.

Section 1206.30, which establishes the Board's membership, was revised to reduce its size from 21 to 18 members due to the removal of three members, i.e., two

importers of frozen mangos and one foreign processor. The three members have been removed from the Board. The remaining 18-member Board will be comprised of 8 importers, 1 first handler, 2 domestic producers, and 7 foreign producers. In addition, eligibility requirements for Board members from the frozen mango industry are removed, and only those eligibility requirements for the first handler and fresh mango importers remain. Lastly, the four "Importer Districts" that were unintentionally removed from the CFR when this section was amended, were restored to section 1206.30 as paragraphs (b)(1) - (b)(4).

Section 1206.31, which describes the procedures for nominating and appointing Board members to the Board, was revised to remove procedures for nominating foreign processors and importers of frozen mangos. Section 1206.32, which specifies that Board members serve for a 3-year term of office and may serve a maximum of two consecutive 3-year terms, was revised to remove the references to importers of frozen mangos and foreign processors.

Section 1206.42 specifies the assessment rate for fresh mangos and frozen mangos. Paragraph (b) was revised to remove the provisions assessing importers of frozen mangos one cent (\$0.01) per pound, and paragraph (d)(2), which includes the Harmonized Tariff Schedule (HTS) of the United States that applies to imported frozen mangos



(number 0811.90.5200), was removed from the Order.

Assessments on frozen mango importers have been terminated.

Subpart B of part 1206 specifies procedures for conducting a referendum. In § 1206.101, paragraphs (c), (d), and (e) were revised to delete the references to eligibility of frozen mango importers to vote in referenda, as frozen mangos are no longer a covered commodity, and to restore definitions prior to when this section was amended.

Finally, the interim final rule updated the OMB control number specified in § 1206.108 from 0581-0209 to 0581-0093.

Sections 1206.34 and 1206.43 from the interim final rule are being further revised. Section 1206.34 specifies quorum requirements for Board meetings, and with the reduction of the Board from 21 to 18, a decrease in quorum requirements is necessary. Therefore, this section was revised to specify that a quorum at a Board meeting exists when at least 10 of the 18 Board members are present. A comment was received requesting a quorum at Board meetings be when at least one more than half of the voting members are present. The comment was accepted, and the section is revised in this final rule.

In §1206.43, paragraphs (a) and (b) were revised to remove references to frozen mango exemptions as frozen mangos are no longer a covered commodity. In making these changes, paragraph (a) was inadvertently changed to

exempting domestic first handlers when the intent was to simply remove frozen mangos as a covered commodity, and therefore, further revision is needed.

### **Regulatory Flexibility Act Analysis and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.5 million.

According to the Board, there are five first handlers of fresh mangos. Based on 2019 Customs data, the majority of first handlers handled less than \$7.5 million worth of fresh mangos and would thus be considered small entities.

Based on 2019 Customs data<sup>1</sup>, there are about 100 importers of fresh mangos and 70 importers of frozen mangos. The majority of fresh and frozen mango importers

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<sup>1</sup><https://www.cbp.gov/trade/automated>

import less than \$7.5 million worth of fresh or frozen mangos and would also be considered small entities. This action will remove frozen mango importers from the requirements associated with this research and promotion Order and result in a regulatory relaxation, and is therefore expected to reduce costs for frozen mango importers.

This rule amends AMS's regulations regarding the mango research and promotion program to remove frozen mangos as a covered commodity under the Order. A continuance referendum was conducted September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers) covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos, and 9 percent did not vote on this question. Of those representing frozen

mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

This rule adopts the following proposed changes in the interim rule without change and removes references to frozen mangos as a covered commodity under the Order including: removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment collection provisions for frozen mangos at a rate of one cent (\$0.01) per pound and thereby eliminating assessments on frozen mango imports; removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually; removing definitions for frozen mango importers concerning eligibility in a referendum; and clarifying and conforming changes to other provisions of the Order. This rule will also update the OMB number 0581-0209 listed in § 1206.108 to OMB number 0581-0093.

Sections 1206.34 and 1206.43 from the interim final rule are being further revised for clarification in this rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements previously approved by the OMB and titled Frozen Mango Research, Promotion and Information

Program, and assigned OMB No. 0581-0314 will be submitted to OMB for withdrawal as these forms and information collection regarding frozen mangos are no longer needed.

The information collection package (0581-0314) that imposes a total burden of 166 hours and 475 responses for 190 respondents will be terminated.

The industry voted in a referendum held September 21, through October 9, 2020, to remove frozen mangos as a covered commodity from the Order. On October 20, 2020, the Department announced through a notice to trade that 42 percent of mango first handlers and importers voted to keep frozen mangos as a covered commodity, 49 percent of mango first handlers and importers voting were not in favor of frozen mangos as a covered commodity and 9 percent did not vote on this question. Of those representing frozen mangos 83 percent voted to eliminate frozen mango as a covered commodity under the Order.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Analysis of Comments**

An interim final rule was published in the **Federal Register** on February 24, 2021, providing a 60-day comment period that ended April 26, 2021. This rule will adopt

most of the changes in the interim final rule. One comment was received requesting a change to section 1206.34 Procedures, concerning what constitutes a quorum at a Board meeting. Section 1206.34 was changed due to the reduction of the Board from 21 to 18, a decrease in quorum requirements was necessary, and therefore, changed from 11 to at least 10 of the 18 Board members are present. The commenter stated that this is problematic when the Board is not at full capacity and recommends a quorum at Board meetings be when at least one more than half of the voting members are present. USDA believes that this comment has merit and is revising section 1206.34 Procedures to specify that a quorum at a Board meeting exists when at least one more than half of the voting members are present.

In addition, USDA made a correction to section 1206.43 Exemptions to clarify a change that was made inadvertently exempting domestic first handlers when the intent was to simply remove frozen mangos as a covered commodity. Therefore, the section has been corrected to exempt first handlers or importers of less than 500,000 pounds of mangos per calendar year, and domestically exported mangos.

After consideration of all relevant matters presented, including comments, the referendum vote and other available information, it is hereby found that finalizing the interim final rule, with the changes below, as published in the

**Federal Register** [86 FR 11094} on February 24, 2021, will tend to effectuate the purposes of the 1996 Act.

**List of Subjects in 7 CFR Part 1206**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recording requirements.

Accordingly, the interim final rule amending 7 CFR part 1206, which was published in the February 24, 2021, **Federal Register** [86 FR 11094], is adopted as final with the following changes:

**PART 1206—MANGO RESEARCH, PROMOTION, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1206 continues to read as follows:

**Authority:** 7 U.S.C. 7411-7425 and 7 U.S.C. 7401.

2. In § 1206.34, revise paragraph (a) to read as follows:

**§ 1206.34 Procedure.**

(a) At a Board meeting, it will be considered a quorum when at least one more than half of the voting members are present.

\* \* \* \* \*

3. In § 1206.43, revise paragraph (a) to read as follows:

**§ 1206.43 Exemptions.**

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption

from the assessments required under § 1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under § 1206.42.

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Erin Morris, Associate Administrator,  
Agricultural Marketing Service

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